IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03/09/2003

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THE HONOURABLE MR.JUSTICE A.K.RAJAN

W.P.NO.12236 OF 2000
AND
W.M.P.NO.17569 OF 2000

S. Baskaran .. Petitioner

-Vs-

1. State of Tamil Nadu
rep. by its Secretary to Government
Housing & Urban Development Dept.
Fort St. George, Chennai-9

2. The Managing Director
Tamil Nadu Housing Board
331, Anna Salai,
Chennai-35

3. The Executive Engineer &
Administrative Officer
Korattur Division
Tamilnadu Housing Board
Ashok Nagar
Chennai-83 .. Respondents

This petition is preferred under Article 226 of the Constitution of India praying for the issue of a writ of certiorarified mandamus as stated therein.

For Petitioner : Mr.K.M.Vijayan, SC

For Respondents : Mr.R.Vijayakumar, GA for R1
Mr.D.Veerasekaran, TNHB for RR2&3

:ORDER

This writ petition has been filed by the petitioner herein for the issuance of a writ of certiorarified mandamus calling for the records relating to the letter of the third respondent in letter No.A4/6013/9 3 dated 10.5.2000 and to quash the same and consequently to direct the respondents to issue sale deed in respect of House in HIG 'Z' type Sector I, flat No.1/6, I Floor at

Madhuravoyal, Korattur Division, Tamilnadu Housing Board.

2. Heard counsel for the petitioner as well as respondents. In the affidavit it is stated that an advertisement was made by the respondents relating to the sale of the House in 'Z' type category at Madhuravoyal, Korattur Division, Tamil Nadu Housing Board in the year 1993 and the rate fixed for HIG 'Z' type flats was at Rs.2,11,400/-. The petitioner purchased the HIG sector I flat No.1/6, First Floor at Madhuravoyal, Korattur Division on outright purchase basis and the possession of the house was handed over to the petitioner on 15.4.1994. A deed of agreement for sale was entered into between the petitioner and the Tamil Nadu Housing Board on 29.3.1994. Clause 9 of the agreement reads thus :

"In case the Purchaser defaults in paying any of the amounts herein before provided on the dates and period fixed for payment, the Vendor may determine this agreement for sale and on such determination the purchaser shall also pay the Vendor forthwith. The vendor shall also demand and the purchaser shall also pay interest on such outstanding amounts at 17% per annum to be calculated from the date they originally become due for payment."

Again by letter No.OP.5/6013/93 dated 7.4.1994, the petitioner was informed that the Firm Cost of the flat was fixed at Rs.2,30,000/-. Subsequently, the petitioner had been allotted the property and he has also paid the entire amount. To that extent, a letter was issued by the third respondent dated 13.12.1996 to the effect that the entire amount has been paid and the balance was nil and he was asked to furnish further particulars for getting a sale deed. While so, the third respondent issued the impugned letter demanding Rs.64,113/- from the petitioner towards the tentative cost. Challenging the same, this writ petition has been filed.

3. Counter affidavit has been filed by the respondents, in which inter-alia it is stated that a mistake has arisen in calculating the amount and the same was pointed out by the Auditor, and hence, the amount has to be recovered from the petitioner herein and the same could be rectified only before the execution of sale deed. The mistake was due to administrative reason, and therefore, the petitioner is liable to pay the amount of Rs.64,113/-.

4. The learned Senior counsel Mr.K.M.Vijayan, appearing for the petitioner contended that having agreed to sell the flat at a "Firm Cost" of Rs.2,30,000/- and having the petitioner paid the entire amount and having given a letter to the effect that the petitioner is not liable to pay any amount, the respondents are prohibited from demanding any amount subsequent to that. The learned counsel for the respondents submits that since it is a genuine mistake committed by the administration, the amount has to be paid by the petitioner.

5. Considering the arguments of the learned counsel for the petitioner and the respondents, this court is of the view that the Housing Board, having offered to sell the flat at a "Firm cost" of Rs.2,30,000/- and having received the amount in full, is prohibited from asking any amount over and above the cost specified as "Firm cost". Therefore, the petitioner is not liable to pay any amount over and above the Firm cost of Rs.2,30,000/- plus any interest. If any mistake has arisen due to administrative reasons, the Housing Board must recover the amount only from those Officers or Clerks concerned, who are responsible for the said mistake. The petitioner in no way responsible for the mistake, and therefore, the petitioner cannot be asked to

pay the said amount. The letter No.A4/6013/93 dated 10.5.2000 issued by the third respondent is quashed. The writ petition is allowed, as prayed for. There will be a direction to the respondents to execute the sale deed within a period of 15 days from the date of receipt of copy of this order. Consequently, connected WMP is closed.

Index : Yes
Internet : Yes

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